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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,957	02/25/2004	Kevin C. South	8017-446/ FG-4581	3789

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EXAMINER

COOLEY, CHARLES E

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 10/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/786,957	Applicant(s) SOUTH, KEVIN C.	
	Examiner Charles E. Cooley	Art Unit 1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☒ Claim(s) 15-20 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>02252004</u> . | 6) <input type="checkbox"/> Other: ____ |

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NON-FINAL OFFICE ACTION

1. This application has been assigned to Technology Center 1700, Art Unit 1723 and the following will apply for this application:

Please direct all written correspondence with the correct application serial number for this application to Art Unit 1723.

Telephone inquiries regarding this application should be directed to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197 or to the Examiner at (571) 272-1139. All official facsimiles should be transmitted to the centralized fax receiving number 571-273-8300.

Information Disclosure Statement

2. Note the attached PTO-1449 forms submitted with the Information Disclosure Statement filed 25 FEB 2004.

Claim Rejections - 35 USC § 102

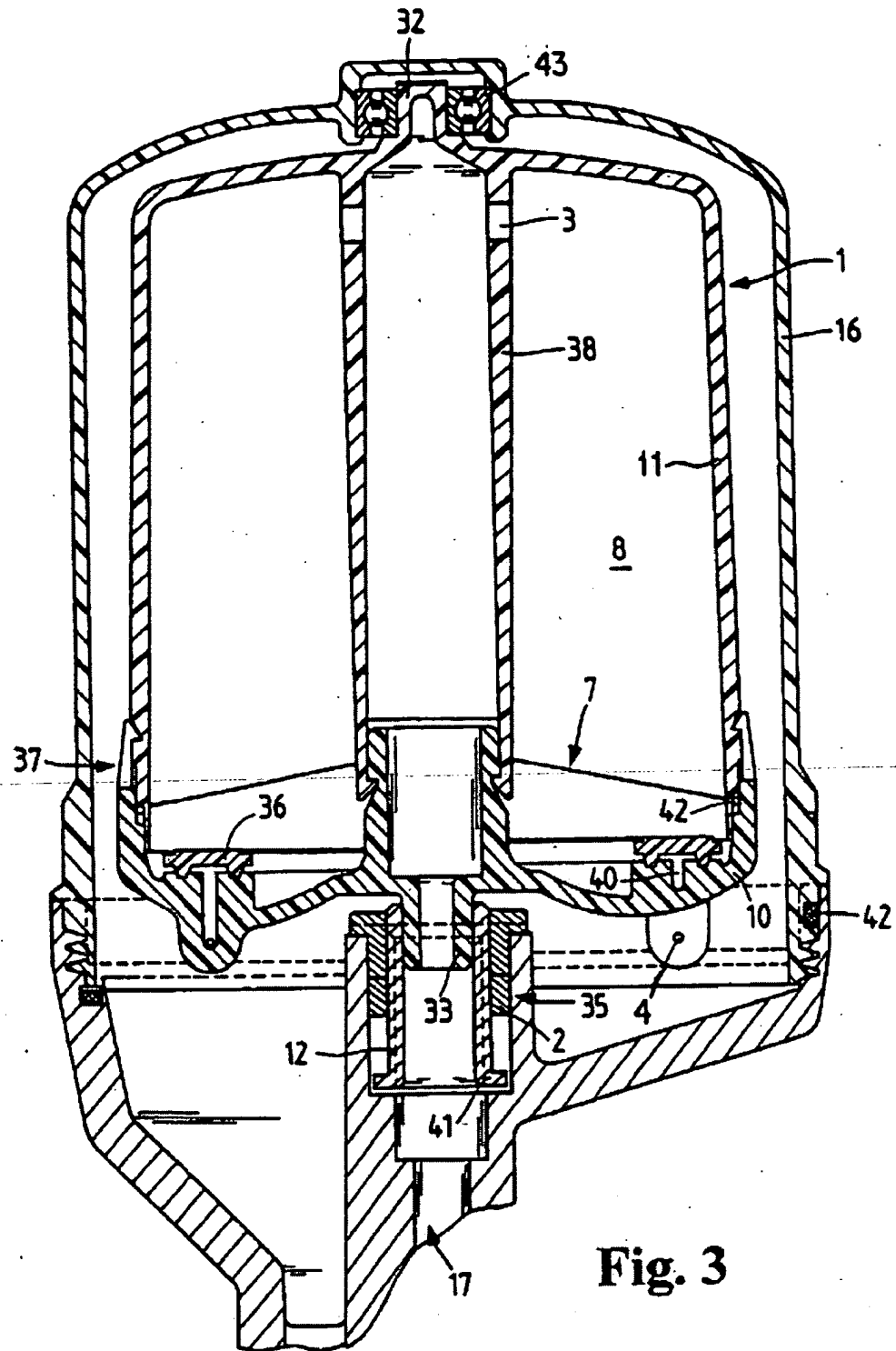
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Frehland et al. (US 6,224,531 B1).**

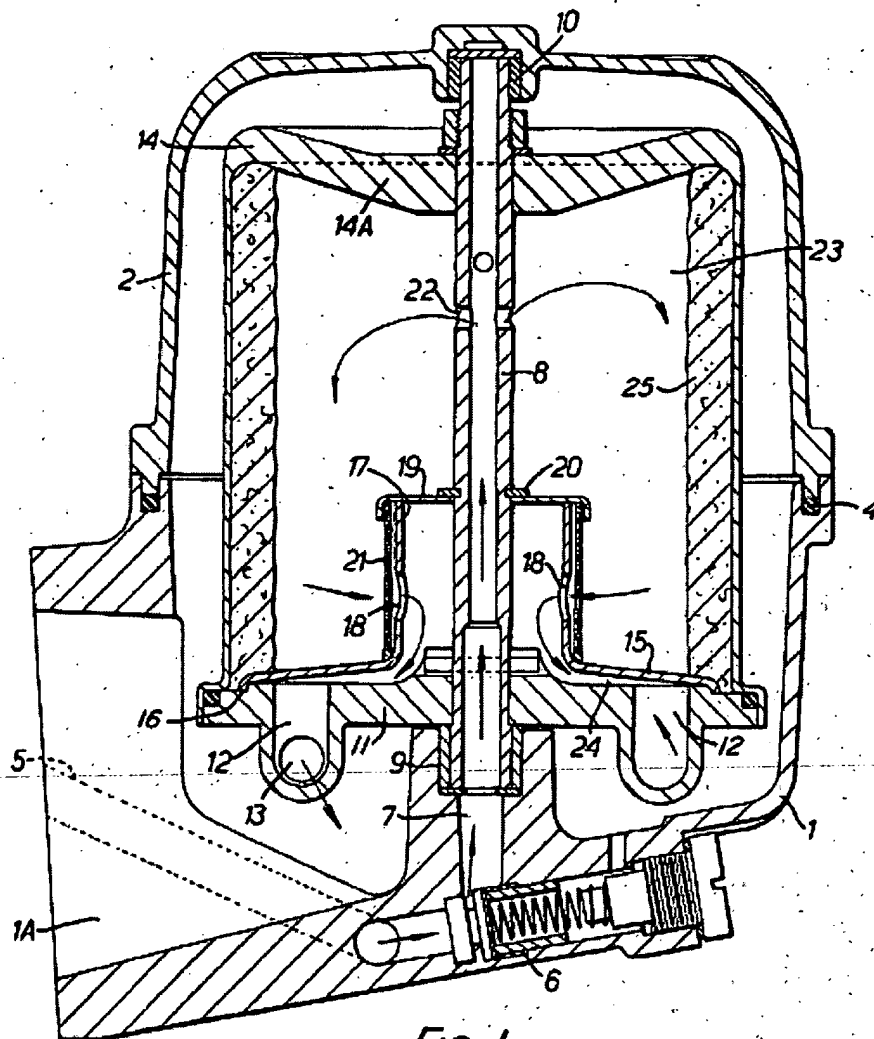
The patent to Frehland et al. '531 discloses as seen below a centrifuge rotor for fluid processing comprising a plastic first rotor portion 11; a plastic first rotor shaft spud 32 joined to said first rotor portion; a plastic second rotor portion 10 joined to said first rotor portion to define a rotor interior; a plastic baseplate 36 positioned in said rotor interior and being received by said second rotor portion; a plastic second rotor shaft spud 33 joined to said second rotor portion and defining a bearing surface extending beyond said second rotor portion, said first rotor shaft spud having a bearing surface that is coaxially aligned with the bearing surface of said second rotor shaft spud (Fig. 3) and a fluid processing element 7 positioned in said rotor interior; a fluid bore (within 33 - Fig. 3).



5. Claims 1, 9, 10, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Beazley (US 3,432,091).

The patent to Beazley '091 discloses in Fig. 1 as seen below a centrifuge rotor for fluid processing comprising a centrifuge rotor for fluid processing, said centrifuge rotor comprising a first rotor portion 14A including a first rotor shaft spud (proximate 10); a second rotor portion 11 joined to said first rotor portion to define a rotor interior; a baseplate 15 positioned in said rotor interior and being received by said second rotor portion, said baseplate 15 including a second rotor shaft spud (proximate 9) extending through and beyond said second rotor portion; and a fluid processing element 21 or 25 positioned in said rotor interior; wherein said first rotor shaft spud defines a fluid bore; wherein said second rotor shaft spud defines a fluid bore; wherein said first rotor shaft spud includes a first bearing surface (that abuts 10) and said second rotor shaft spud includes a second bearing surface (that abuts 9) that is coaxially aligned with said first bearing surface.

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Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 2-8 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beazley (US 3,432,091) in view of Herman et al. (US 5,637,217).**

Beazley (US 3,432,091) discloses a centrifuge rotor for separating solids from a fluid but does not disclose the elements of the centrifuge rotor being formed of plastic.

The patent to Herman et al. '217 discloses a centrifuge rotor employed in the same environment as Beazley and teaches that the elements that form the centrifuge rotor are formed of plastic. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have formed any of the components of the centrifuge rotor of Beazley from plastic as taught by Herman et al. '217 for the purposes of permitting incineration or recycling of the rotor (col. 4, line 51 through col. 5, line 3).

Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have formed any of the components of the centrifuge rotor of Beazley from plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416; *Sinclair & Carroll Co., Inc. v. Interchemical Corp.*, 65 USPQ 297 (1945).

It is observed that artisans must be presumed to know something about the art apart from what the references disclose (see *In re Jacoby*, 309 F.2d 513, 135 USPQ 317 (CCPA 1962)). Moreover, skill is presumed on the part of those practicing in the art. See *In re Sovish*, 769 F.2d 738, 226 USPQ 771 (Fed. Cir. 1985). Therefore, it is concluded that the selection of a well-known material in the art such as plastic would have been obvious to one of ordinary skill in this art, if for no other reason than to achieve the advantage of using a more modern material or a lower cost or more easily fabricated material or a material suitable for cost effective disposal.

With regard to the product-by-process limitations in the claims (i.e., the manner in which the rotor elements are fabricated, e.g., by molding), such limitations do not impart patentability to the claims per MPEP 2113.

Allowable Subject Matter

8. Claims 15-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571)

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272-1139. The examiner can normally be reached on Mon-Fri. All official facsimiles should be transmitted to the centralized fax receiving number 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Charles E. Cooley", followed by a stylized flourish.

Charles E. Cooley
Primary Examiner
Art Unit 1723

21 October 2005